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FILED
Jun 23 2011, 9:47 am
CLERK
of the supreme court, court of appeals and tax court

IN THE COURT OF APPEALS OF INDIANA

ROBERT M. RICHARDSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-1010-CR-654
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0612-FC-442

June 23, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Robert M. Richardson appeals from the trial court's revocation of his probation. Specifically, Richardson contends that the evidence was insufficient to prove that he violated the terms of his probation by committing a new criminal offense. We affirm.

FACTS AND PROCEDURAL HISTORY

On December 11, 2006, the State charged Richardson with Class C felony money laundering and Class C felony attempted forgery in Madison County under cause number 48D01-0612-FC-442 ("Cause No. FC-442"). Richardson pled guilty to both counts and was sentenced to an aggregate eight-year sentence with six years executed and two years suspended to probation.

On July 7, 2010, Richardson gave Amber Ford what was represented to be a payroll check payable to Ford from the YMCA in the amount of $561.90. Ford asked her sister, Tempo Richardson to drive her to a gas station so she could cash the check. Despite the fact that both Tempo and Ford knew that the check was counterfeit, Tempo drove Ford to a Clark Service Station in Marion where Ford attempted to cash the check. An employee of the service station notified the Marion Police Department that an individual was attempting to cash a counterfeit check.

Moments later, Sergeant Eric Randall arrived at the Clark Service Station where he encountered Ford and Tempo. Sergeant Randall took Ford and Tempo into custody for questioning. Sergeant Randall separated Ford and Tempo, notified them of their rights, and interviewed them regarding the counterfeit check. Ford and Tempo each gave consistent

statements in which they implicated Richardson. Sergeant Randall then received a search warrant for Richardson's home and conducted a search, during which the police seized paper similar to that used to print the counterfeit check and Richardson's computer. Sergeant Randall subsequently learned that the YMCA does not issue paper checks to its employees, but rather distributes its payroll through direct deposit.

On July 9, 2010, Richardson was charged with Class C felony forgery and Class C felony conspiracy to commit forgery in Grant County under cause number 27C01-1007-FC-184 ("Cause No. FC-184"). On August 9, 2010, the State filed a Notice of Violation of Probation in Cause No. FC-442, alleging that Richardson had violated the terms of his probation by committing a new criminal offense. The trial court conducted a probation revocation hearing over the course of three days. Both Tempo and Ford were subpoenaed to appear during Richardson's probation revocation hearing, and were granted use immunity.

During this hearing, Tempo acknowledged that she drove Ford to the service station where Ford tried to cash a counterfeit check, and that Ford had received the counterfeit check from Richardson. Ford also acknowledged that she tried to cash a counterfeit check that she received from Richardson. Ford further testified that Richardson instructed her to cash the counterfeit check and bring the money back to him, and he would then "split it up." Tr. p. 78. Both Tempo and Ford further acknowledged that they, along with Richardson, faced criminal charges in Grant County as a result of their involvement in the matter, but were not promised a more lenient deal in their respective criminal cases in exchange for their testimony in the instant matter. On September 21, 2010, the trial court determined that

Richardson had violated the terms of his probation by committing a new criminal offense and revoked Richardson's previously suspended two-year sentence.

DISCUSSION AND DECISION

> Probation is a matter of grace and a conditional liberty which is a favor, not a right. The trial court determines the conditions of probation and may revoke probation if these conditions are violated. The decision to revoke probation is within the sound discretion of the trial court. And its decision is reviewed on appeal for abuse of that discretion.

Cooper v. State, 917 N.E.2d 667, 671 (Ind. 2009) (citations omitted). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

It is well-settled that a probation revocation hearing is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence. *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999). We will consider all evidence most favorable to the judgment of the trial court without reweighing the evidence or judging the credibility of the witnesses. *Id*. If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke the defendant's probation. *Id*. When, as here, the alleged probation violation is the commission of a new crime, the State does not need to show that the probationer was convicted of a new crime. *Whatley v. State*, 847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006). The trial court only needs to find that there was probable cause to believe that the defendant violated a criminal law. *Id*.

Richardson contends that the trial court abused its discretion in revoking his probation

because the State failed to present sufficient evidence to prove that he committed a new criminal offense. Specifically, Richardson argues that the State presented "no credible evidence" to support the trial court's determination that he violated his probation. Appellant's Br. p. 11. We disagree.

The record demonstrates that Sergeant Randall testified that both Tempo and Ford implicated Richardson in individually conducted interviews following Ford's unsuccessful attempt to cash a counterfeit check which she claimed to have received from Richardson. Tempo and Ford subsequently provided consistent testimony at Richardson's probation revocation hearing where they stated that Tempo drove Ford to the service station where she attempted to cash what she knew was a counterfeit check that Richardson had given to her. Ford subsequently stated that Richardson instructed her to give him the cash and he would "split it up." Tr. p. 78. Upon review, we conclude that the evidence presented during the probation revocation hearing was sufficient to prove by a preponderance of the evidence that Richardson violated his probation by committing the unrelated criminal offenses charged in Cause No. FC-184. Richardson effectively asks this court to reconsider the credibility of the witnesses and to reweigh the evidence, which, again, we will not do. *See Cox*, 706 N.E.2d at 551.

The judgment of the trial court is affirmed.

BAKER, J., and MAY, J., concur.